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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,575	11/14/2003	Stelios Tzannis	0180.00	1780
21968	7590	09/25/2006	EXAMINER	
NEKTAR THERAPEUTICS 150 INDUSTRIAL ROAD SAN CARLOS, CA 94070			KIM, YUNSOO	
			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/714,575	TZANNIS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yunsoo Kim	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) 1-30 and 60-74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-74 are pending.

Claims 1-30 and 60-74 stand withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected invention.

Claims 31-59 are under consideration in the instant application.

2. In view of Applicants' response, the following rejection remains.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
4. Claims 31-59 stand rejected under 35 U.S.C. 102 (b) as being anticipated by U.S. Pat. No. 6,267,958 (IDS reference AK, of record) for the reasons set forth in the office action mailed 4/3/06.

Applicants' arguments filed 6/30/06 have been fully considered but they are not persuasive.

Applicants traversed the rejection based on that the newly recited limitation upon entry of the amendment was not taught in the '958 patent and the spray dried formulation reconstituted much faster than the corresponding lyophilized starting material.

As indicated in the office action mailed 4/3/06, the claimed invention is drawn to a reconstituted antibody formulation comprising an antibody formed from a spray-dried powder and an excipient. The patentability of the product does not depend on its method of production. The claimed antibody formulation and the referenced antibody formulation both comprise an antibody, diluent, buffer and sucrose as an excipient (claims 1-8, 47 col. 17, lines 1-40, in particular). Thus, the newly claimed product feature being visually clear upon reconstitution is inherent property of the antibody formulations.

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Applicants argue that the spray dried formulation reconstituted much faster than the corresponding lyophilized starting material shown in [0162]. However, the sample test as in [0162] was performed in the distilled water and cannot be extrapolated into the claimed diluent. In addition, the referenced antibody concentration is at 50mg/ml and cannot be extrapolated into the claimed concentration range of about 1000mg/ml. The specification of instant application on p. 41 (Table VII) discloses that the claimed diluent exceeds reconstituting time of 10 min at 190 mg/ml concentration and it is less likely to reconstitute 1000mg/ml antibody within 10min. Thus, prior art teachings anticipate the claimed invention.

5. The following new ground of rejection is necessitated by the Applicants' amendment filed 6/30/06.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 31-59 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a New Matter rejection.

The specification as file does not provide a written description for the phrase "visually clear reconstituted composition within 10 minutes of being formed". The specification on p. 23 lines 1-2 discloses the general reconstituting time "within about 10 minutes" and the limitation is not associated with the claimed antibody concentration ranges, especially at about 1000mg/ml. As is evidenced by the specification of instant application on p. 41 (Table VII), the claimed diluent exceeds reconstituting time of 10 min at 190 mg/ml concentration.

8. No claims are allowable.

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9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yunsoo Kim whose telephone number is 571-272-3176. The examiner can normally be reached on Monday thru Friday 8:30 - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 6, 2006

  
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